

12.204

threshold but not exceeding \$5.5 million (\$11 million for acquisitions as described in 13.500(e)), including options, contracting activities shall employ the simplified procedures authorized by Subpart 13.5 to the maximum extent practicable.

[60 FR 48241, Sept. 18, 1995, as amended at 62 FR 264, Jan. 2, 1997; 62 FR 64917, Dec. 9, 1997; 69 FR 8313, Feb. 23, 2004; 69 FR 76351, Dec. 20, 2004; 71 FR 57366, Sept. 28, 2006]

12.204 Solicitation/contract form.

(a) The contracting officer shall use the Standard Form 1449, Solicitation/Contract/Order for Commercial Items, if (1) the acquisition is expected to exceed the simplified acquisition threshold; (2) a paper solicitation or contract is being issued; and (3) procedures at 12.603 are not being used. Use of the SF 1449 is nonmandatory but encouraged for commercial acquisitions not exceeding the simplified acquisition threshold.

(b) Consistent with the requirements at 5.203 (a) and (h), the contracting officer may allow fewer than 15 days before issuance of the solicitation.

[62 FR 264, Jan. 2, 1997]

12.205 Offers.

(a) Where technical information is necessary for evaluation of offers, agencies should, as part of market research, review existing product literature generally available in the industry to determine its adequacy for purposes of evaluation. If adequate, contracting officers shall request existing product literature from offerors of commercial items in lieu of unique technical proposals.

(b) Contracting officers should allow offerors to propose more than one product that will meet a Government need in response to solicitations for commercial items. The contracting officer shall evaluate each product as a separate offer.

(c) Consistent with the requirements at 5.203(b), the contracting officer may allow fewer than 30 days response time for receipt of offers for commercial items, unless the acquisition is covered by the World Trade Organization Gov-

ernment Procurement Agreement or a Free Trade Agreement (see 5.203(h)).

[60 FR 48241, Sept. 18, 1995, as amended at 62 FR 264, Jan. 2, 1997; 64 FR 72418, Dec. 27, 1999; 69 FR 1053, Jan. 7, 2004; 69 FR 77872, Dec. 28, 2004]

12.206 Use of past performance.

Past performance should be an important element of every evaluation and contract award for commercial items. Contracting officers should consider past performance data from a wide variety of sources both inside and outside the Federal Government in accordance with the policies and procedures contained in subpart 9.1, section 13.106, or subpart 15.3, as applicable.

[60 FR 48241, Sept. 18, 1995, as amended at 61 FR 39192, July 26, 1996; 62 FR 51270, Sept. 30, 1997; 62 FR 64917, Dec. 9, 1997]

12.207 Contract type.

Agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items. Indefinite-delivery contracts (see subpart 16.5) may be used where the prices are established based on a firm-fixed-price or fixed-price with economic price adjustment. Use of any other contract type to acquire commercial items is prohibited. These contract types may be used in conjunction with an award fee and performance or delivery incentives when the award fee or incentive is based solely on factors other than cost (see 16.202-1 and 16.203-1).

[60 FR 48241, Sept. 18, 1995, as amended at 68 FR 13201, Mar. 18, 2003]

12.208 Contract quality assurance.

Contracts for commercial items shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice.